IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-08-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. JUSTICE R. BANUMATHI

HABEAS CORPUS PETITION NO.118 OF 2007

Mary Jasmine
W/o.J.D. Soloman .. Petitioner

Vs.

1. The Secretary to the Government,
   Prohibition & Excise Department,
   Secretariat,
   Chennai 600 009.

2. The Commissioner of Police,
   Greater Chennai,
   Egmore, Chennai 8. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 18.11.2006 in Memo No.285/BDFGISSV/2006, against the petitioner's husband, J.D. Soloman, son of Jesudoss, aged about 65 years, who is confined at Central Prison, Chennai, and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr. V.Parthiban

For Respondents : Mr.M. Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

P.K. MISRA, J

Wife of the detenu has filed this Habeas Corpus Petition for quashing the order of detention dated 18.11.2006 passed by the Commissioner of Police, Chennai under Section 3(1) read with 3(2) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) on the allegation that the detenu is a Goonda within the meaning of the said Act.

2. The order of detention dated 18.11.2006 was executed on 19.11.2006. Subsequently, copy of the grounds of detention was served on 23.11.2006. In the grounds of detention it is indicated that four persons including the detenu had formed a Trust in the name of "Alleluiah Full Gospel Ministries Mission India and Weaker Section Development Service Trust of India with the aim of constructing dwelling houses for the poor public by getting foreign aid. It is further stated that the detenu was a member of the Trust. In the grounds of detention reference has been made to several incidents wherein the President, Secretary and Members of the Trust are alleged to have cheated several contractors by requiring them to make deposits as Earnest Money Deposit. It is further stated that when the persons came to know of the fraud, they had asked for refund of the amount deposited, but such persons were threatened. In the grounds of detention reference has been made to several cases registered under Sections 406, 420, 341, 323, 506(2) read with 34 IPC and it is further indicated that investigation was going on. In the above background, the detaining authority concluded :-

> "3. ... Hence, I am satisfied that Thiru J.D. Solomon is habitually committing crimes and has cheated about 560 persons under the guise of offering construction work by abusing and misusing religious position as Rev. Father and collected huge money to the tune of Rs.6.5 Crores as Earnest Money Deposit. Further there was total commotion among the members of the Christian community an they were mentally disturbed very much because of the nefarious activities of Thiru. Joseph Solomon, Thiru. Issac Samuel and Thiru.J.D. Solomon holding responsible position in the community made them to bow their head since caused serious hurt to the community. Having regard to the amplitude of the gravity of the offence, perpetrate in an organized and systematic manner not only against the victims, but also against the civilized society at large will amount to disturbance of pubic order and thus he has acted in a manner prejudicial to the maintenance of public order and as such he is a Goonda as contemplated under Section 2(f) of the Tamil Nadu 14

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of 1982. By committing the above described grave crime he has cheated a number of persons under the guise of offering construction work and collected huge money to the tune of Rs.6.5 Crores as Earnest Money Deposit has created alarm and a feeling of insecurity in the minds of the people of the area and thereby acted in a manner prejudicial to the maintenance of public order.

4. I am aware that Thiru. J.D. Solomon is in remand in Central Crime Branch "X" Crime Nos.775/2006, 789/2006, 790/2006, 791/2006, 792/2006, 795/2006 and 796/2006 and has moved bail applications before the Additional Chief Metropolitan Magistrate Court, Egmore, Chennai, in Crl.M.P.No.1300/2006 in "X" Crime No.775/2006 and the same was dismissed. Another bail application was filed before the Additional Chief Metropolitan Magistrate Court, Egmore, Chennai in "X" Crime No.775/2006 and the same is pending. I am also aware that it is very likely of his coming out on bail since in similar cases bails are granted by the same Court. I am also aware that there is real possibility of his coming out on bail by filing another bail application before the Additional Chief Metropolitan Magistrate Court, Egmore, Chennai in "X" Crime Nos.789/2006, 790/2006, 791/2006, 792/2006, 795/2006 and 796/2006 since in similar cases bail orders are granted by the same Court. If he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order. Further the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public order. On the materials placed before me, I am fully satisfied that the said Thiru.J.D. Solomon is a Goonda and that there is a compelling necessity to detain him in order to prevent him from indulging in such further activities in future which are prejudicial to the maintenance of public order under the provisions of the Tamil Nadu Act 14 of 1982."

3. Learned counsel appearing for the petitioner has challenged the above order of detention by raising the following grounds :-

(1) The conclusion of the detaining authority that the detenu, who was in custody, likely to be released on bail is based on incorrect particulars and there has been non-application of mind on the above aspect.

(2) There has been delay in disposal of the representation and the communication of the result thereof.

(3) The conclusion that the detenu has cheated about 560 persons is not based on any material and at any rate materials in support of such conclusion has not been furnished to the detenu.

(4) The conclusion of the detaining authority that it is necessary to detain the detenu to prevent him from acting in a manner prejudicial to the maintenance of public order is vitiated as the incidents relied upon by the detaining authority can only give rise to law and order situation and the question of affecting public order did not arise keeping in view the nature of the alleged offences committed.

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4. So far as the first contention is concerned, it appears that the detaining authority was labouring under the impression that after rejection of Crl.M.P.No.1300 of 2006 in Cr.No.775 of 2006, another bail application was filed before the Additional Chief Metropolitan Magistrate and the same was pending. Learned counsel for the petitioner has invited our attention to Page No.141 of the booklet which indicates that such subsequent bail application had been rejected. A specific assertion to that effect has also been made in the affidavit in Ground No.5. It is also further contended that conclusion of the detaining authority "that there is real possibility of the detenu coming out on bail by filing another bail application before the Additional Chief Metropolitan Magistrate Court, Egmore, Chennai, in "X" Crime Nos.789/2006, 790/2006, 791/2006, 792/2006, 795/2006 and 796/2006" discloses non-application of mind on the part of the detaining authority. The question of filing another bail application in those cases could not have arisen as the first application for bail has not been filed.

5. Learned counsel for the petitioner has contended that conclusion recorded in para 4 of the grounds of detention, which has already been extracted by us, clearly indicates that the order of detention has been passed in a mechanical manner without even bothering to notice that bail application was not pending as erroneously assumed by the detaining authority. In support of such contention, learned counsel for the petitioner has placed reliance upon the decision of this Court reported in (2003)M.L.J. (Crl.) 214 (N. KUMARESAN v. STATE REPRESENTED BY SECRETARY TO GOVERNMENT, PROHIBITION AND EXCISE DEPARTMENT, CHENNAI AND ANOTHER), wherein it was observed :-

> "5. ... Though it is true that all the bail applications which are ultimately rejected need not be put before the detaining authority and their copy need not be supplied to the detenu later on, it is unthinkable that the detaining authority does not even take note of that fact and on the other hand makes a completely incorrect factual statement that no bail application was filed till the order was passed. This suggests the casual approach on the part of the detaining authority. We are, therefore, convinced that this incorrect statement depicts the casual approach with which the matters were dealt with, firstly by the sponsoring authority and secondly by the detaining authority. In that view, the detention order itself would be bad as it was passed casually and on the basis of incorrect statements made in the grounds. However, the matter does not stop here."

6. In several decisions of the Supreme Court, noticed by the Full Bench of this Court reported in 2005(4) CTC 497 (K. THIRUPATHI v. DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, TIRUCHIRAPALLI DISTRICT AT TIRUCHIRAPALLI AND ANOTHER), it has been observed that even where a person is in custody an order of preventive detention can be passed, if the detaining authority on cogent materials on record comes to the conclusion

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that there is imminent possibility of the detenu being released on bail. It is obvious that while arriving at such a conclusion the detaining authority is required to keep in view the correct factual position.

7. In the present case, even though the subsequent bail application in Cr.No.775 of 2006 had been rejected, the detaining authority was labouring under the impression that such bail application was still pending. If the detaining authority would have taken note of the fact that the subsequent application also had been rejected, it is quite possible that the detaining authority in its subjective satisfaction might have come to a different conclusion that there was no imminent possibility of the detenu being released on bail. At any rate, since the conclusion of the detaining authority is her subjective satisfaction it is not possible for us to fathom as to what would have been the conclusion of the detaining authority if she would have taken note of the correct factual position relating to rejection of bail application at the time when the detention order was passed. In our considered opinion, the wrong assumption of the detaining authority on such vital aspect has the effect of vitiating the ultimate conclusion of the detaining authority. On this ground the detention order is liable to be quashed.

8. The second ground raised by the petitioner is unexplained delay in dealing with the representation and communicating the result thereof. Learned counsel appearing for the State has produced before us a chart indicating the manner in which the representation dated 11.12.2006, which was received on 12.12.2006, has been dealt with. It appears that even though remarks were called for on 13.12.2006 such remarks were received on 27.12.2006. It appears that in the office of the Collectorate, even though remarks were received from the sponsoring authority on 20.12.2006 such report was sent to the Government on 25.12.2006. There is no explanation forthcoming as to why remarks could not have been sent to the Government soonafter such remarks were received from the sponsoring authority. Similarly, it seems the rejection letter, even though sent to the detenu on 29.12.2006, was served on the detenu on 5.1.2007, for which no explanation is forthcoming.

9. It is well settled that the representation made by the detenu should be considered as expeditiously as possible without any unavoidable delay and proper explanation should be furnished for any delay. In the facts of the present case, we are convinced that there has been unexplained delay in dealing with the representation as well as subsequently communicating the result of such representation. On this ground also the order of detention is liable to be quashed.

10. It is no doubt true that the allegations against the detenu and other co-accused persons are quite serious in nature. However, it is well settled that in matters relating to preventive detention, the procedural safeguards are to be strictly adhered to and any infraction inevitably results in quashing of the order of detention. In this

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connection, the sentiments expressed by Bhagwati, J in AIR 1980 SC 1183 (SMT. ICCHU DEVI CHORARIA v. UNION OF INDIA AND OTHERS) are worth recalling. It was observed in that case :-

> "3. . . . We may point out straightaway that we are not at all happy at the thought that our order may have resulted in setting free a possible smuggler. We are not unmindful of the fact that the COFEPOSA Act has been enacted for the purpose of eradicating the evil of smuggling which is eating into the vitals of the nation like a cancerous growth and eroding the economic stability of the country and when an order is made by the Court releasing a person detained under this Act, it is quite possible that the effect of the order may be to let loose on the society, a smuggler who might in all probability, resume his nefarious activities causing incalculable mischief and harm to the economy of the nation. But at the same time we cannot forget that the power of preventive detention is a draconian power justified only in the interest of public security and order and it is tolerated in a free society only as a necessary evil. The power to detain without trial is an extraordinary power constituting encroachment on personal liberty and it is the solemn duty of the Courts to ensure that this power is exercised strictly in accordance with the requirements of the Constitution and the law. The courts should always lean in favour of upholding personal liberty, for it is one of the most cherished values of mankind. Without it life would not be worth living. It is one of the pillars of free democratic society. Men have rightly laid down their lives at its altar in order to secure it, protect it and preserve it. The Constitution has therefore, while conceding the power of preventive detention, provided procedural safeguards with a view to protecting the citizen against arbitrary and unjustified invasion of personal liberty and the courts have always zealously tried to uphold and enforce these safeguards. This Court has also through its judicial pronouncements created various legal bulworks and breakwaters into the vast powers conferred on the executive by the laws of preventive detention prevalent at different points of time. It is true that sometimes even a smuggler may be able to secure his release from detention if one of the safeguards or requirements laid down by the Constitution or the law has not been observed by the detaining authority but that can be no reason for whittling down or diluting the safeguards provided by the Constitution and the law. If the detaining authority wants to preventively detain a smuggler, it can certainly do so, but only in accordance with the provisions of the Constitution and the law and if there is a breach of any such provision, the rule of law requires that the detenu must be set at liberty, however wicked or mischievous he may be. The law cannot be subverted, particularly in the area of personal liberty, in order to prevent a smuggler from securing his release from detention, because whatever is the law laid down by the courts in the case of a smuggler would be equally applicable in

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the case of preventive detention under any other law. This court would be laying down a dangerous precedent if it allows a hard case to make bad law. We must, therefore, interpret the provisions of the Constitution and the law in regard to preventive detention without being in any manner trammeled by the fact that this is a case where a possible smuggler is seeking his release from detention."

(Emphasis added)

11. In such view of the matter, we are constrained to quash the order of detention notwithstanding the seriousness of the allegations. It is not necessary to consider other contentions raised by the petitioner as the detention order is being quashed.

12. The Habeas Corpus Petition is accordingly allowed and the impugned order is set aside. The detenu is set at liberty forthwith unless his presence is required in connection with any other case.

dpk

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to the Government,
   Prohibition & Excise Department,
   Secretariat,
   Chennai 600 009.

2. The Commissioner of Police,
   Greater Chennai,
   Egmore, Chennai 8.

3. The Public Prosecutor,
   High Court, Madras.

4. The Superintendent,
   Central Prison,puzhal, Chennai.

5. The Joint Secretary to Government,
   Public (Law & Order) Fort St.George,
   Chennai-9.

KLT(CO)
dcp/23.8

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